

**Exhibit 1 to Plaintiff's
Supplemental Opposition to
Defendant Benton Express, Inc.'s
Motion for Summary Judgment**

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
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6 HAZEL ROBY, as Administratrix
7 of the Estate of RONALD TYRONE
8 ROBY, Deceased,

Plaintiff,

9 VS.

10 BENTON EXPRESS, INC., et al.,

11 Defendants.
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15 The testimony of ALBERT GARLIN McLELLAN,
16 taken at Bozeman, Jenkins & Matthews, 114
17 East Gregory Street, Pensacola,
18 Florida, on the 5th day of October, 2005,
19 commencing at approximately 11:15, o'clock,
20 a.m.
21
22
23

COPY

1 MR. BOONE:

2 Q Okay. Sir, have you ever received any
3 written document or training in safety meetings from
4 Benton Express concerning what to do if you get tired
5 on the road?

6 A I can't remember getting anything like
7 that.

8 Q Have you received any written
9 instructions or any communications in safety meetings
10 on what to do if you get sick on the road while
11 driving?

12 A I have never received any.

13 Q Have you received any written material or
14 training in your safety meetings concerning what to
15 do if you're going to be delayed on the truck for,
16 say, over four hours?

17 A Yes, I have. I have to call in.

18 Q Okay. Let's talk about that. Sir, have
19 you ever received any written document or anything
20 telling you how frequently you should be in contact
21 with Benton Express when carrying or when picking up
22 or dropping off a load?

23 A Road drivers only call in in case of an

1 emergency, like flat tires or breakdowns, accidents.

2 Q And who calls in only under emergencies?

3 A The road drivers.

4 Q And you said road trucks?

5 A Right, the road drivers.

6 Q Okay. Now, I'm sorry. That's okay. I
7 just -- I just used the term and I've heard other
8 people use the term line-haul drivers. Is that what
9 we're talking about?

10 A Right.

11 Q Okay. Have you ever received any written
12 document called Department of Transportation HM 232,
13 Driver and Cargo Security Policy, from Benton
14 Express?

15 A Yes.

16 Q You do recall that document?

17 A Yes.

18 Q And when did you first receive that
19 document?

20 A Probably over a year ago.

21 Q Okay. Would that have been the first
22 time you ever saw that document?

23 A Yes.

1 from beginning to end?

2 A Oh, probably six months ago.

3 Q Okay. Well, I know you don't have it in
4 front of me (sic), but I'm going to read something to
5 you and ask you if you recall it saying that. Do you
6 recall if that document said on page -- and I know
7 you won't remember the page number, but I'm going to
8 read it for the record. 084 Bates number. That the
9 scope of this policy, it says: The following
10 security guidelines and procedures apply to all
11 work/load assignments.

12 Do you ever recall reading that?

13 A Yes.

14 Q And further on page 3, which is Bates
15 number 086, do you ever recall reading this here:
16 Drivers are expected to maintain regular
17 communication with the company while in transit?

18 A Yes, I remember reading that.

19 Q And as a line-haul driver, have you ever
20 -- as a line-haul driver, do you maintain regular
21 communication with the company while in transit?

22 A No, I do not.

23 Q Any reason why you don't?

1 A We're not -- line-haul drivers are not
2 required to do that. The city drivers are.

3 Q Anything you recall reading that says
4 that, that it does not apply to line-haul drivers?

5 A No, I can't remember.

6 Q Well, let me ask you this. Do you
7 remember, as you -- whether you can point it to me
8 since it's not in front of you, but -- and your
9 attorney, the attorney there, may have a copy, but if
10 he doesn't, what I'm trying to figure out, do you
11 remember if there is anything specifically in there
12 that says regular communication does not apply --
13 this regular communication paragraph I read does not
14 apply to line-haul drivers?

15 A I can't -- no, I don't.

16 Q Did anybody tell you it doesn't apply to
17 line-haul drivers?

18 A I can't remember anyone telling me that.

19 Q Also, in this document, it says that --
20 well, let me ask you this here. The truck that you
21 drive every day, is it the same one?

22 A Yes.

23 Q Does city drivers drive your tractor or

1 clear that you said prior to your direct contact with
2 Craig, you had not had any conversation with anybody
3 about Craig?

4 A That's correct.

5 Q Okay. So, on Sunday, you had a
6 conversation with Craig about what time?

7 A Around 10 minutes till 5:00 or five
8 minutes till 5:00.

9 Q And that's P.M.?

10 A P.M.

11 Q Okay. Sunday, 5:00 P.M., you had contact
12 with Craig. And as of Sunday, 5:00 P.M., when you
13 had contact with Craig, would you have still
14 considered him a friend at that time?

15 A Yes.

16 Q And all the things I asked you before
17 about him being a good employee, would you have
18 considered Craig a good employee still at that point
19 after your 5:00 P.M. conversation with Craig on
20 Sunday?

21 A Yes.

22 Q And you would have considered him still a
23 good guy?

1 A Yes.

2 Q Nothing had changed about -- to your
3 knowledge, about Craig that would have made him not a
4 good Benton Express employee?

5 MR. BROCKWELL: You're talking about
6 prior to the phone call or during the phone
7 call or after the phone call?

8 MR. BOONE: Yeah. Let me ask the
9 question. Let me just go ahead and go
10 forward.

11 MR. BOONE:

12 Q So, at -- at 5:00 or five minutes to 5:00
13 when you talked to Craig, where -- did Craig call you
14 on your personal cell phone?

15 A Right. He called me on the walkie-talkie
16 or direct connect or whatever you want to call it.

17 Q On your cell phone?

18 A That's correct.

19 Q Which would have been at that PIN number
20 186 asterisk 112 asterisk 19311?

21 A Yes.

22 Q And at that time, when your friend Craig
23 called you, what did he tell you?

1 A He wanted to know if I could run the
2 Tallahassee run, which was his regular run.

3 Q Okay.

4 A And that's what he asked me.

5 Q And what did you tell him?

6 A I told him yes, I was backing under the
7 trailer right then.

8 Q Okay. And so, on that Sunday, at 5:00,
9 you were about to do Craig's Tallahassee run?

10 A Yes.

11 Q All right. Anything else you and Craig
12 talked about?

13 A During that conversation?

14 Q Yeah, during that conversation.

15 A Yes. I asked him where he was at. And
16 he said he was still hung up in Atlanta.

17 Q All right. So, at your -- when you
18 talked to him at 5:00 on Sunday, he told you he was
19 still in Atlanta?

20 A Yes.

21 Q And did y'all talk -- did y'all talk
22 about anything else other than the fact he told you
23 he was still in Atlanta?

1 called you and asked you could you do his Tallahassee
2 run? Did you call him on his Nextel radio and ask
3 him could he do your Atlanta run?

4 A No, this particular time was -- we talked
5 about it about three days before Friday, and I said
6 -- asked him if he wanted to run it and if he didn't
7 have anything going on with his family or something
8 like that.

9 Q Right. And what did he say?

10 A He said, yeah, he'd run it.

11 Q And did -- was it anything else y'all
12 talked about other than that time when he told you he
13 could do it for you?

14 A No.

15 Q Did you have to sign any paperwork saying
16 that Craig was going to run it for you?

17 A No.

18 Q Did you have to call anybody at the
19 Tallahassee or the Atlanta terminal and get an okay
20 for Craig to run it?

21 A No.

22 Q Did you have to okay it with anybody?

23 A Glenn Clark, the terminal manager.